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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,439	01/08/2002	Michael Joseph Calderaro	AUS920010788US1	4640

40412 7590 03/12/2007  
IBM CORPORATION- AUSTIN (JVL)  
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AUSTIN, TX 78709-0609

EXAMINER
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NEWTON, JARED W

ART UNIT	PAPER NUMBER
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3692

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/042,439

Applicant(s)

CALDERARO ET AL.

Examiner

Jared W. Newton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/8/2007, 7/13/2006, 3/30/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 18 recite the limitation "the expected group savings amounts" in lines 11-12 (claim 5) and line 13 (claim 18). There is insufficient antecedent basis for this limitation in the claims.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by *Cross-Country Evidence on Public Sector Retrenchment*, © 1999, to Haltiwanger et al. (hereafter Haltiwanger).

At the outset, with respect to the Haltiwanger reference, please note that cited page numbers are those listed on the reference itself (i.e. the reference begins on page 23).

In regard to claim 1, Haltiwanger discloses a method for analyzing the effects of employment retrenchment comprising: identifying a plurality of surplus (retrenched) employee data; retrieving the compensation amount associated with each employee, and calculating a total saving amount by summing the retrieved compensation amounts. Haltiwanger recites, "Financial benefits are measured as the present discounted value of the wage bill savings from the retrenched workers." (Page 38, lines 7-8). Table A-3 shows total retrenchment savings (Page 58).

In regard to claim 2, Haltiwanger further discloses identifying a formula for determining severance pay for retrenched workers; determining the severance amount for each employee; and calculating a total severance cost. Haltiwanger discloses a conceptual framework for analyzing and measuring severance programs. (See generally Section I, pages 25-29). Table 3 shows various characteristics that form severance programs (page 34). Table A-2 shows summations of retrenchment costs (page 56).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haltiwanger as applied to claims 1 and 2 above, alone.

In regard to claims 5 and 7, the steps disclosed are obvious in view of the teachings of Haltiwanger. The steps of claim 7 are an alternative formula for arriving at the savings amount of claim 1, which is taught by Haltiwanger as set forth above. Likewise, the steps of claim 5 are an alternative means of reaching the severance cost of claim 2, which is taught by Haltiwanger as set forth above. Using a different formula to arrive at a known value does not hold patentable weight unless the new formula includes an unexpected result.

Further, Haltiwanger analyzes various total retrenchment costs and savings of multiple countries. (See generally pages 44-49 and 54-63). These studies rely on statistics such as percentages of employment redundancy (see e.g. page 45, line), "average cost per worker" (see e.g. page 47, line 36), and "compensation per worker" (see e.g. page 46, line 15). These studies further show that it was well known in the art of employment retrenchment in the 1990's to use these and similar statistics to arrive at total retrenchment costs and savings.

Claims 3, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haltiwanger as applied to claims 1 and 2 above, and further in view of *Efficient Public Sector Downsizing*, © 1997 to Rama (hereafter Rama).

Haltiwanger discloses the method as set forth above including the limitations of claims 1 and 2, and further discloses comparing actual severance costs to budgeted theoretical severance costs by way of a break even indicator that determines the time (in years) for the severance costs to be fully mitigated by wage-bill savings from a retrenchment program. (See pages 37-39). Haltiwanger does not disclose modifying the severance pay formula as a result of the comparison.

In regard to claims 3 and 6, Rama discloses methods of downsizing, and notes the steps of identifying a number of redundant workers and their corresponding wages (compensations from employer) as compared to a theoretical benchmark, applying severance formulas to the workers, and readjusting the redundancy numbers and severance amounts and methods to retain desired workers while displacing undesired workers. (See page 41, column 3).

The Haltiwanger and Rama references are analogous art because they are from the same field of endeavor—methods of downsizing, and analysis of the costs and savings thereof. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the adjustments disclosed by Rama to the wage savings and severance costs disclosed by Haltiwanger. Although it is inherently ideal to minimize the break-even periods disclosed by Haltiwanger (thereby maximizing savings of a retrenchment program through fewer wages or lower severance costs), Haltiwanger

does not show adjustments in the severance formula for accomplishing the minimization. Likewise, Haltiwanger does not disclose a recalculation of savings based on a different number of wage payments. Rama provides a means of modifying a severance package through the combination of standard severance pay offers and other mechanisms. (See page 41, column 3 through page 42, column 1). Rama further discloses an example of a two-phase downsizing program that occurred in the early 1990's at the Central Bank of Ecuador (see page 42). The second phase included severance pay and number adjustments that were made in response to unsuccessful severance packages instituted in the first phase. See *Id.* Rama further discloses reducing the wage bill based on various adjustments and comparisons to worker productivity. (See page 41). The motivation for applying the adjustments in severance offers and wage savings taught by Rama to the formula and break-even determinations disclosed by Haltiwanger would include that as disclosed by Rama—to avoid adverse selection by retaining desired employees and displacing undesired ones—or by the Ecuador bank study—to improve future downsizing programs over past ones.

In regard to claim 4, the Ecuador bank study in Rama further discloses the step of adjusting the severances of the second phase in response to guidelines set forth in national law. The study recites, "It was decided that job separations had to be explicitly based on the role and functions of the BCE, as defined by the 1992 law on "monetary regulation and state banking." (See Rama, page 42). It would have been further obvious to readjust the severance programs as disclosed by Haltiwanger so as to comply with legal mandates as disclosed by Rama. The motivation would have been that of the

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Ecuador Bank—to avoid abuses of government funds, and consequences stemming therefrom.

Claims 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haltiwanger in view of Rama as applied to claims 1-7, and further in view of US Patent App. Pub. No. 2004/0162771 to Tamatsu et al. (hereafter Tamatsu).

In regard to claims 8-13, Haltiwanger in view of Rama does not disclose: one or more processors; a memory accessible by the processors; one or more nonvolatile storage devices accessible by the processors; and a financial impact analysis tool.

In regard to claims 14-20, Haltiwanger in view of Rama does not disclose: a computer program product stored in a computer operable media.

Tamatsu discloses a method and system for evaluating individuals and groups within an organization comprising: a personal computer having a central processing unit, a server, an operating system, application programs, communication mechanisms, a means of computation, a database control mechanism, and a database (see FIG. 1). The Haltiwanger, Rama, and Tamatsu references are analogous art because they are from the same field of endeavor—financial evaluation of organizations. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the computer hardware and software taught by Tamatsu, to implement the system and methods of evaluating the financial costs and benefits related to a severance program as taught by Haltiwanger in view of Rama. At the time of the invention, using a computer to process large amounts of information (e.g. employee data) as disclosed by



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Tamatsu was a well-known and successful means of more efficiently calculating the equations and formulas applied to the information. The motivation for using a computer to process such information would be to process more information in a shorter period of time, while avoiding human error.

***Requirement for Information under 37 C.F.R. § 1.105***

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

Upon conducting a search for prior art, and or contained in the Information Disclosure Statement filed March 30, 2006, the Examiner discovered a press release dated July 9, 2001, titled *IT Confidential*. The release included the following recitation: "IBM Global Services said last week that it's laying off 1,000 employees. An IBM spokeswoman says the layoffs are a routine house-cleaning exercise, in which the company takes stock of its skill base and phases out those not much in demand. The spokeswoman declined to specify what skill or which units were most affected by the layoffs."

The Examiner believes that this text and information contributing to the text may be relevant to a complete search of the prior art, and particularly to the claimed system and method for analyzing the financial impact of a severance program. Information pertaining to the release may show that the inventor had knowledge and or possession of the claimed invention one year prior to the earliest priority date.

In response to this requirement, please provide any known publication, brochures, manuals, or other form of written information specifically relating to the abovementioned text, and particularly relating to information regarding the determination of how to implement the noted layoff. This request must be satisfied before the application and any of its claims can be deemed allowable, so that the record reflects a complete search of all known prior art and information, including information Applicant may have used to derive the instant claims. The fee and certification requirements of 37 C.F.R. § 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 C.F.R. § 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 C.F.R. § 1.105 are subject to the fee and certification requirements of 37 C.F.R. § 1.97. In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in the requirement, or where such subject matter is not indicated, the subject matter found in Applicant's disclosure. The Applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete response to the requirement for that item.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

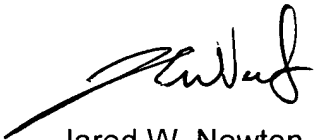
- US Patent Application No. 2004/0254805 to Schwerin-Wenzel et al.
- US Patent Application No. 2004/0220825 to Schwerin-Wenzel et al.
- US Patent Application No. 2004/0181425 to Schwerin-Wenzel et al.
- US Patent Application No. 2003/0004790 to Calderaro et al.
- US Patent Application No. 2003/0004789 to Calderaro et al.
- US Patent Application No. 2003/0130886 to Calderaro et al.
- US Patent Application No. 2003/0130885 to Calderaro et al.
- US Patent Application No. 2002/0143496 to Mactas et al.
- US Patent No. 6,944,597 to Callen et al.
- US Patent No. 6,332,125 to Callen et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

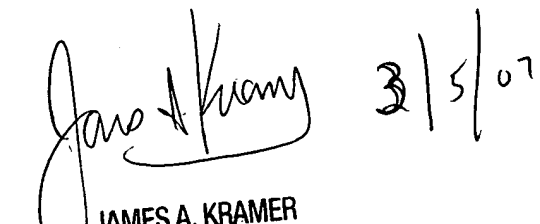
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jared W. Newton  
March 2, 2007  
JWN



JAMES A. KRAMER  
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